

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG MICHAEL WEBSTER,

Defendant-Appellant.

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UNPUBLISHED

November 14, 2006

No. 271543

Oakland Circuit Court

LC No. 2006-008423-AR

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by leave granted from the circuit court's order affirming the district court's order denying defendant's motion to quash the complaint charging him with operating a motor vehicle under the influence of liquor (OUIL), second offense, MCL 257.625(1) and (8)(b). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In November 1999, defendant was charged with OUIL, first offense, 257.625(1) and (8)(a). On December 8, 1999, he pleaded guilty to operating while impaired (OWI), MCL 257.625(3), under an agreement according to which the district court would defer defendant's sentencing until December 2000. MCL 771.1(2). The district court placed several conditions on defendant, but left him, as a British subject, free to return to the United Kingdom during that period. Defendant apparently adhered to these conditions, and paid the fines and costs imposed by the district court. The latter's records show that the release with improvement was signed on December 23, 2000, and defendant's file was closed. But, when time came for sentencing, the district court was advised that defendant had returned to the United Kingdom, and no judgment of sentence was ever entered in the OWI matter.

In June 2005, defendant was again arrested for drunk driving, and was charged with OUIL second offense, with the December 1999, guilty plea to OWI being cited as the prior offense. Defendant moved to quash the enhanced OUIL charge on the ground that his OWI plea could not be counted as a conviction because a judgment of sentence was never entered. The district court disagreed, holding that although it had lost jurisdiction to impose sentence in the OWI case for lack of timeliness, the conviction itself nonetheless stood. The circuit court affirmed, agreeing that despite the district court's loss of jurisdiction for purposes of sentencing, the OWI conviction remained valid for the purposes of sentence enhancement. We agree.

For the purpose of the sentence enhancement provisions of the drunk driving offenses, a “prior conviction” is a conviction for OUIL or OWI according to Michigan law, or a local ordinance or sister-state law substantially corresponding to a Michigan law. MCL 257.625(23); *People v Wolfe*, 251 Mich App 239, 243-244; 651 NW2d 72 (2002).

MCL 771.1(2) provides as follows:

In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court’s records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

Nothing in the statute suggests that failing to sentence a defendant following the one-year delay effectively dismisses the original charge or expunges the conviction.

“The conviction is the finding of guilt. Sentence is not an element of the conviction but rather a declaration of its consequences.” *People v Funk*, 321 Mich 617, 621; 33 NW2d 95 (1948). Accordingly, “[a]n unexcused violation of the one-year limit contained in the delayed sentencing statute affects *only* the court’s authority to sentence the defendant, nothing more.” *People v Boynton*, 185 Mich App 669, 671; 463 NW2d 174 (1990) (emphasis in the original). Where the trial court has lost jurisdiction to impose sentence, the defendant “remains convicted of the crime and subject to any collateral consequences arising from the conviction.” *People v Dubuis*, 158 Mich App 504, 507; 405 NW2d 181 (1987).

For these reasons, the district court’s failure to impose a sentence for defendant’s OWI conviction does not nullify defendant’s plea-based conviction in the matter. That conviction can provide the basis for enhancing defendant’s instant charge to OUIL second offense.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio